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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,993	09/05/2003	Keith A. Bello	TUC920030089US1	9348
49080	7590	08/27/2007		
DALE F. REGELMAN 4231 S. FREMONT AVENUE TUCSON, AZ 85714			EXAMINER WHIPPLE, BRIAN P	
			ART UNIT 2152	PAPER NUMBER
			MAIL DATE 08/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/656,993	Applicant(s) BELLO ET AL.	
	Examiner Brian P. Whipple	Art Unit 2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/5/03 and 4/6/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-21 are pending in this application and presented for examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lisiecki et al. (Lisiecki), U.S. Publication No. 2002/0147774 A1, in view of Ravi et al. (Ravi), U.S. Patent No. 6,292,834 B1.

4. As to claim 1, Lisiecki discloses a method to write information to two servers (Fig. 2; Abstract, ln. 1-7), wherein a first server comprises one or more first devices (Fig. 3; [0046], ln. 5-7) having a first adjustable aggregate bandwidth, and wherein said first server provides information to, and receives information from, a second server (Fig. 2 and 3), comprising the steps of:

writing a host computer file to one of said one or more devices disposed in said first server (Fig. 3; [0046], ln. 5-18);

queuing a copy job, wherein said copy job comprises copying said host computer file to said second server (Fig. 2; [0046], ln. 14-20).

Lisiecki is silent on said devices being virtual host devices and said server being a virtual tape server;

determining the age of said queued copy job;

setting an age threshold;

determining if the age of said queued copy job is greater than said age threshold;

operative if the age of said queued copy job is greater than said age threshold, decreasing said first adjustable aggregate bandwidth.

Ravi discloses determining the age of said queued copy job (Fig. 5A, item 513; Abstract, ln. 8-13; the playtime is the age of the job being copied from the server to the client);

setting an age threshold (Abstract, ln. 8-13);

determining if the age of said queued copy job is greater than said age threshold (Abstract, ln. 8-13);

operative if the age of said queued copy job is greater than said age threshold, decreasing said first adjustable aggregate bandwidth (Abstract, ln. 1-13).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lisiecki by determining the age of a queued job, setting an age threshold, and decreasing bandwidth as taught by Ravi in order to avoid buffer overrun (Ravi: Abstract, ln. 24-27).

Official notice is taken that virtual tape storage is well known in the art and that it would have been obvious to one of ordinary skill in the art at the time of the invention to

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modify the teachings of Lisiecki and Ravi by using virtual tape storage servers and host devices as is known in the art in order to backup data in a network.

5. As to claim 2, Lisiecki and Ravi disclose the invention substantially as in parent claim 1, including operative if the age of said queued copy job is not greater than said age threshold, restoring said first adjustable aggregate bandwidth to a pre-determined nominal value (Abstract, ln. 13-18).

6. As to claim 3, the claim is rejected for the same reasons as claim 1 above. It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the teachings of Lisiecki and Ravi to a second system as a designing characteristic of the networking industry is applying known techniques to a plurality of systems. The benefits of Lisiecki's and Ravi's teachings, as discussed for claim 1 above, are the same for a second system.

7. As to claim 4, the claim is rejected for the same reasons as claims 2-3 above.

8. As to claims 5-6, 9, 11-14, and 16-20, the claims are rejected for the same reasons as claim 1 above.

9. As to claim 7, the claim is rejected for the same reasons as claims 1 and 3 above.

10. As to claims 8 and 21, the claims are rejected for the same reasons as claims 1-3 above.

11. As to claims 10 and 15, the claims are rejected for the same reasons as claim 2 above.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the Notice of References Cited (PTO-892).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Whipple whose telephone number is (571) 270-1244. The examiner can normally be reached on Mon-Fri (8:30 AM to 5:00 PM EST).

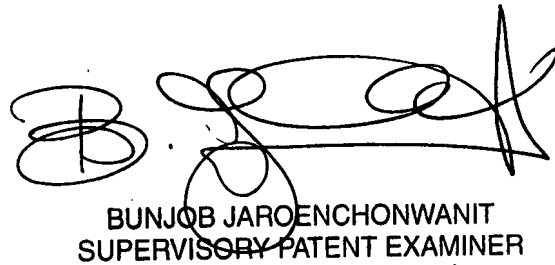
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BPW

Brian P. Whipple
8/9/07



BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER

8/19/07